

ESSB 5748 - H COMM AMD

By Committee on Health & Human Services Appropriations & Oversight

ADOPTED AND ENGROSSED 4/7/11

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires otherwise.

5 (1) "Cottage food operation" means a person who produces cottage
6 food products only in the home kitchen of that person's primary
7 domestic residence in Washington and only for sale directly to the
8 consumer.

9 (2) "Cottage food products" means nonpotentially hazardous baked
10 goods; jams, jellies, preserves, and fruit butters as defined in 21
11 C.F.R. Sec. 150 as it existed on the effective date of this section;
12 and other nonpotentially hazardous foods identified by the director in
13 rule.

14 (3) "Department" means the department of agriculture.

15 (4) "Director" means the director of the department.

16 (5) "Domestic residence" means a single-family dwelling or an area
17 within a rental unit where a single person or family actually resides.
18 Domestic residence does not include:

19 (a) A group or communal residential setting within any type of
20 structure; or

21 (b) An outbuilding, shed, barn, or other similar structure.

22 (6) "Home kitchen" means a kitchen primarily intended for use by
23 the residents of a home. It may contain one or more stoves or ovens,
24 which may be a double oven, designed for residential use.

25 (7) "Permitted area" means the portion of a domestic residence
26 housing a home kitchen where the preparation, packaging, storage, or
27 handling of cottage food products occurs.

28 (8) "Potentially hazardous food" means foods requiring temperature
29 control for safety because they are capable of supporting the rapid

1 growth of pathogenic or toxigenic microorganisms, or the growth and
2 toxin production of Clostridium botulinum.

3 NEW SECTION. **Sec. 2.** (1) The director may adopt, by rule,
4 requirements for cottage food operations. These requirements may
5 include, but are not limited to:

6 (a) The application and renewal of permits under section 3 of this
7 act;

8 (b) Inspections as provided under section 4 of this act;

9 (c) Sanitary procedures;

10 (d) Facility, equipment, and utensil requirements;

11 (e) Labeling specificity beyond the requirements of this section;

12 (f) Requirements for clean water sources and waste and wastewater
13 disposal; and

14 (g) Requirements for washing and other hygienic practices.

15 (2) A cottage food operation must package and properly label for
16 sale to the consumer any food it produces, and the food may not be
17 repackaged, sold, or used as an ingredient in other foods by a food
18 processing plant, or sold by a food service establishment.

19 (3) A cottage food operation must place on the label of any food it
20 produces or packages, at a minimum, the following information:

21 (a) The name and address of the business of the cottage food
22 operation;

23 (b) The name of the cottage food product;

24 (c) The ingredients of the cottage food product, in descending
25 order of predominance by weight;

26 (d) The net weight or net volume of the cottage food product;

27 (e) Allergen labeling as specified by the director in rule;

28 (f) If any nutritional claim is made, appropriate labeling as
29 specified by the director in rule;

30 (g) The following statement printed in at least the equivalent of
31 eleven-point font size in a color that provides a clear contrast to the
32 background: "Made in a home kitchen that has not been subject to
33 standard inspection criteria."

34 (4) Cottage food products may only be sold directly to the consumer
35 and may not be sold by internet, mail order, or for retail sale outside
36 the state.

1 (5) Cottage food products must be stored only in the primary
2 domestic residence.

3 NEW SECTION. **Sec. 3.** (1) All cottage food operations must be
4 permitted annually by the department on forms developed by the
5 department. All permits and permit renewals must be made on forms
6 developed by the director and be accompanied by an inspection fee as
7 provided in section 4 of this act, a seventy-five dollar public health
8 review fee, and a thirty dollar processing fee. All fees must be
9 deposited into the food processing inspection account created in RCW
10 69.07.120.

11 (2) In addition to the provision of any information required by the
12 director on forms developed under subsection (1) of this section and
13 the payment of all fees, an applicant for a permit or a permit renewal
14 as a cottage food operation must also provide documentation that all
15 individuals to be involved in the preparation of cottage foods have
16 secured a food and beverage service worker's permit under chapter 69.06
17 RCW.

18 (3) All cottage food operations permitted under this section must
19 include a signed document attesting, by opting to become permitted,
20 that the permitted cottage food operation expressly grants to the
21 director the right to enter the domestic residence housing the cottage
22 food operation during normal business hours, or at other reasonable
23 times, for the purposes of inspections under this chapter.

24 NEW SECTION. **Sec. 4.** (1) The permitted area of all cottage food
25 operations must be inspected for basic hygiene by the director both
26 before initial permitting under section 3 of this act and annually
27 after initial permitting. In addition, the director may inspect the
28 permitted area of a cottage food operation at any time in response to
29 a foodborne outbreak or other public health emergency.

30 (2) When conducting an annual basic hygiene inspection, the
31 director shall, at a minimum, inspect for the following:

32 (a) That the permitted cottage food operator understands that no
33 person other than the permittee, or a person under the direct
34 supervision of the permittee, may be engaged in the processing,
35 preparing, packaging, or handling of any cottage food products or be in

1 the home kitchen during the preparation, packaging, or handling of any
2 cottage food products;

3 (b) That no cottage food preparation, packaging, or handling is
4 occurring in the home kitchen concurrent with any other domestic
5 activities such as family meal preparation, dishwashing, clothes
6 washing or ironing, kitchen cleaning, or guest entertainment;

7 (c) That no infants, small children, or pets are in the home
8 kitchen during the preparation, packaging, or handling of any cottage
9 food products;

10 (d) That all food contact surfaces, equipment, and utensils used
11 for the preparation, packaging, or handling of any cottage food
12 products are washed, rinsed, and sanitized before each use;

13 (e) That all food preparation and food and equipment storage areas
14 are maintained free of rodents and insects; and

15 (f) That all persons involved in the preparation and packaging of
16 cottage food products:

17 (i) Have obtained a food and beverage service workers permit under
18 chapter 69.06 RCW;

19 (ii) Are not going to work in the home kitchen when ill;

20 (iii) Wash their hands before any food preparation and food
21 packaging activities; and

22 (iv) Avoid bare hand contact with ready-to-eat foods through the
23 use of single-service gloves, bakery papers, tongs, or other utensils.

24 (3) The department shall charge an inspection fee of one hundred
25 twenty-five dollars for any initial or annual basic hygiene inspection,
26 which must be deposited into the food processing inspection account
27 created in RCW 69.07.120. An additional inspection fee must be
28 collected for each visit to a cottage food operation for the purposes
29 of conducting an inspection for compliance.

30 (4) The director may contract with local health jurisdictions to
31 conduct the inspections required under this section.

32 NEW SECTION. **Sec. 5.** (1) The gross sales of cottage food products
33 may not exceed an annual amount set by the department. The
34 determination of the maximum annual gross sales must be computed on the
35 basis of the amount of gross sales within or at a particular domestic
36 residence and may not be computed on a per person basis within or at an
37 individual domestic residence.

1 (2) If gross sales exceed the maximum annual gross sales amount,
2 the cottage food operation must either obtain a food processing plant
3 license under chapter 69.07 RCW or cease operations.

4 (3) A cottage food operation exceeding the maximum annual gross
5 sales amount is not entitled to a full or partial refund of any fees
6 paid under section 3 or 4 of this act.

7 (4) The maximum annual gross sales amount must be established in
8 rule by the department consistent with this subsection. The amount
9 must be set at fifteen thousand dollars until December 31, 2012.
10 Beginning January 1, 2013, the department must increase the fifteen
11 thousand dollar annual gross sales limit biennially to reflect
12 inflation. The department may determine inflation-based increases in
13 any matter it deems most efficient.

14 (5) The director may request in writing documentation to verify the
15 annual gross sales figure.

16 NEW SECTION. **Sec. 6.** (1) For the purpose of determining
17 compliance with this chapter, the director may access, for inspection
18 purposes, the permitted area of a domestic residence housing a cottage
19 food operation permitted by the director under this chapter. This
20 authority includes the authority to inspect any records required to be
21 kept under the provisions of this chapter.

22 (2) All inspections must be made at reasonable times and, when
23 possible, during regular business hours.

24 (3) Should the director be denied access to the permitted area of
25 a domestic residence housing a cottage food operation where access was
26 sought for the purposes of enforcing or administering this chapter, the
27 director may apply to any court of competent jurisdiction for a search
28 warrant authorizing access to the permitted area of a domestic
29 residence housing a permitted cottage food operation, upon which the
30 court may issue a search warrant for the purposes requested.

31 (4) Any access under this section must be limited to the permitted
32 area and further limited to the purpose of enforcing or administering
33 this chapter.

34 NEW SECTION. **Sec. 7.** (1) After conducting a hearing, the director
35 may deny, suspend, or revoke any permit provided for in this chapter if

1 it is determined that a permittee has committed any of the following
2 acts:

3 (a) Refused, neglected, or failed to comply with the provisions of
4 this chapter, any rules adopted to administer this chapter, or any
5 lawful order of the director;

6 (b) Refused, neglected, or failed to keep and maintain records
7 required by this chapter, or to make the records available when
8 requested pursuant to the provisions of this chapter;

9 (c) Consistent with section 6 of this act, refused the director
10 access to the permitted area of a domestic residence housing a cottage
11 food operation for the purpose of carrying out the provisions of this
12 chapter;

13 (d) Consistent with section 6 of this act, refused the department
14 access to any records required to be kept under the provisions of this
15 chapter; or

16 (e) Exceeded the annual income limits provided in section 5 of this
17 act.

18 (2) The director may summarily suspend a permit issued under this
19 chapter if the director finds that a cottage food operation is
20 operating under conditions that constitute an immediate danger to
21 public health or if the director is denied access to the permitted area
22 of a domestic residence housing a cottage food operation and records
23 where the access was sought for the purposes of enforcing or
24 administering this chapter.

25 NEW SECTION. **Sec. 8.** The rights, remedies, and procedures
26 respecting the administration of this chapter, including rule making,
27 emergency actions, and permit suspension, revocation, or denial are
28 governed by chapter 34.05 RCW.

29 NEW SECTION. **Sec. 9.** (1)(a) Any person engaging in a cottage food
30 operation without a valid permit issued under section 3 of this act or
31 otherwise violating any provision of this chapter, or any rule adopted
32 under this chapter, is guilty of a misdemeanor.

33 (b) A second or subsequent violation is a gross misdemeanor. Any
34 offense committed more than five years after a previous conviction
35 shall be considered a first offense.

1 (2) Whenever the director finds that a person has committed a
2 violation of any of the provisions of this chapter, and that violation
3 has not been punished pursuant to subsection (1) of this section, the
4 director may impose upon and collect from the violator a civil penalty
5 not exceeding one thousand dollars per violation per day. Each
6 violation shall be a separate and distinct offense.

7 NEW_SECTION. **Sec. 10.** Except as otherwise provided in this
8 chapter, cottage food operations with a valid permit under section 3 of
9 this act are not subject to the provisions of chapter 69.07 RCW or to
10 permitting and inspection by a local health jurisdiction.

11 NEW_SECTION. **Sec. 11.** Nothing in this chapter affects the
12 application of any other state or federal laws or any applicable
13 ordinances enacted by any local unit of government.

14 **Sec. 12.** RCW 69.07.120 and 1992 c 160 s 5 are each amended to read
15 as follows:

16 All moneys received by the department under the provisions of this
17 chapter and chapter 69.--- RCW (the new chapter created in section 14
18 of this act) shall be paid into the food processing inspection account
19 hereby created within the agricultural local fund established in RCW
20 43.23.230 and shall be used solely to carry out the provisions of this
21 chapter and chapters 69.--- RCW (the new chapter created in section 14
22 of this act) and 69.04 RCW.

23 **Sec. 13.** RCW 69.07.100 and 2002 c 301 s 10 are each amended to
24 read as follows:

25 (1) The provisions of this chapter shall not apply to
26 establishments issued a permit or licensed under the provisions of:

27 ~~((+1))~~ (a) Chapter 69.25 RCW, the Washington wholesome eggs and
28 egg products act;

29 ~~((+2))~~ (b) Chapter 69.28 RCW, the Washington state honey act;

30 ~~((+3))~~ (c) Chapter 16.49 RCW, the Meat inspection act;

31 ~~((+4))~~ (d) Chapter 77.65 RCW, relating to the direct retail
32 endorsement for wild-caught seafood;

33 ~~((+5))~~ (e) Chapter 69.--- RCW (the new chapter created in section
34 14 of this act), relating to cottage food operations;

1 (f) Title 66 RCW, relating to alcoholic beverage control; and
2 ~~((+6+))~~ (g) Chapter 69.30 RCW, the sanitary control of shellfish
3 act. ~~((However,))~~

4 (2) If any such establishments process foods not specifically
5 provided for in the above entitled acts, ~~((such))~~ the establishments
6 ~~((shall be))~~ are subject to the provisions of this chapter.

7 (3) The provisions of this chapter ~~((shall))~~ do not apply to
8 restaurants or food service establishments.

9 NEW SECTION. Sec. 14. Sections 1 through 11 of this act
10 constitute a new chapter in Title 69 RCW."

11 Correct the title.

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